

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 984 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

VIJAYKUMAR MOHANBHAI GANDHI

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner No. 1-4
MR NAGESH SOOD, AGP for Respondent No. 1-2
RULE SERVED for Respondent No. 1-3
MR SHITAL R PATEL for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 17/08/2004

ORAL JUDGEMENT

Rule. Shri Nagesh Sood, Ld. AGP waives service of rule on behalf of the respondent no.1 and 2. Shri Sheetal Patel, Learned Advocate waives service of rule on behalf of the respondent no.3. With the consent of the parties, the matter is taken up for final hearing today.

2. In this petition under Article 226/227 of the

Constitution of India, the petitioners have challenged the legality and validity of the judgment and order dated 10.6.2003 passed by the Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad passed in Revision Application No.30 of 2001 in dismissing the same and confirming the order passed by the Collector, Surat dated 29.3.2001 with regard to Entry No.1086.

3. One Chetanbhai Prabhubhai Patel and the petitioner nos.2 to 4 herein Madhusudan Babubhai and others were the joint owners of land bearing Block No.51 situated at Village Pali, Taluka Chaurasi, District Surat. It is the case of the respondent no.3 that one Kantilal Bhulabhai Kapadia by forging the power of attorney sold the land in question to the petitioner no.1 herein by registered sale deed. The necessary entry to that effect was also mutated in the Record of Rights vide Entry No.1197. As some objections were raised against the said entry, the Mamlatdar, Chaurasi treated it as a disputed entry and ultimately, by order dated 26.7.1999 set aside the Entry No.1197. Being aggrieved and dissatisfied with the order passed by the Mamlatdar, Chaurasi, Surat dated 26.7.1999 in setting aside Entry No.1197, the petitioners preferred Appeal before the Deputy Collector, Chaurasi Prant, Surat and the Deputy Collector, Chaurasi Prant, Surat by its judgment and order dated 14.8.2000 allowed RTS Appeal No.32 of 1999 and passed an order to certify Entry No.1197 dated 28.12.1998.

4. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Collector, Chaurasi Prant, Surat dated 14.8.2000 in certifying Entry No.1197 dated 28.12.1998, the respondent no.3 preferred an appeal before the Collector, Surat which was numbered as RTS Appeal No.79 of 2000. The Collector, Surat vide judgment and order dated 29.3.2001 not only set aside the order passed by the Deputy Collector, Chaurasi Prant, Surat dated 14.8.2000 in certifying Entry No.1197 dated 28.12.1998 and confirming the order passed by the Mamlatdar, Chaurasi, Surat dated 26.7.1999, however, cancelling Entry No.1086 which was in favor of the petitioner nos.2 to 4 herein and the respondent no.3 by which they have purchased the land in question in the year 1986 on the ground that there is a breach of Section 63 of the Bombay Tenancy Act.

5. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Surat dated 29.3.2001 passed in RTS Appeal No.79 of 2000, the petitioners preferred Revision Application before the

Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad which was numbered as Revision Application No.30 of 2001, who by his judgment and order dated 21.6.2003 partly allowed the said revision application by holding that the Collector, Surat should not have set aside Entry No.1086 without giving any opportunity to the concerned parties and remanded the matter to the Collector, Surat to pass appropriate order with regard to both the entries after issuing the notices and giving opportunity to all the concerned parties and quashed and set aside the order passed by the Collector, Surat dated 29.3.2001. Being aggrieved and dissatisfied with the judgment and order passed by the State Government dated 21.6.2003 in Revision Application No.30 of 2001, the petitioners have preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

6. Shri J.M.Patel, Learned Advocate appearing on behalf of the petitioners had submitted that in fact, there was no reason for the Secretary (Appeals) to remand the matter to the Collector. He has further submitted that in fact, the Revenue Authorities had no jurisdiction to consider the validity of the transaction on the ground that there is a breach of law while exercising the powers in RTS proceedings. He has further submitted that in fact, the petitioner no.1 has purchased the land in question by registered sale deed and therefore, the effect of registered sale deed was required to be given in the Record of Rights. He has further submitted that so far as the disputed question of title is concerned, the Revenue Authorities exercising the powers under RTS proceedings has no jurisdiction to decide the same. He has further submitted that Entry No. 1086 was dated 7.6.1986 and now on remand, the Collector would be exercising the powers after a period of 18 years i.e. much after a reasonable period, which is not permissible under the law. He has further submitted that in view of the amendment in the Bombay Tenancy Act, the requirement of being agriculturist within 8 kms. is not there now and therefore also, there is no question of now setting aside Entry No. 1086 on the ground that there is a breach of Section 63 of the Bombay Tenancy Act as the petitioner nos.2 to 4 were not agriculturists within 8 kms. of the area.

7. In response to the notice issued by this Court, Shri Sheetal Patel, Learned Advocate appears on behalf of the respondent no.3. An affidavit in reply is filed in which the legality and validity of the sale deed in favor of the petitioner no.1 is challenged and on the basis of

the same, he has challenged Mutation Entry No. 1197 which was in favor of the petitioner no.1. He has submitted that in view of the same, the Collector is required to hold the inquiry and decided the dispute with regard to the aforesaid two entries as per the judgment and order passed by the Revisional Authority. He has further submitted that in fact, the respondent no.3 is in possession of the land in question and therefore, requested to dismiss the present Special Civil Application.

8. Civil Application being C.A.No.1582 of 2004 is also filed by the petitioners in the present petition in which it is prayed that the respondent no.3 be restrained from disturbing the possession of the present petitioners.

9. Heard the Learned Advocates for the parties.

10. Block No.51 is purchased by the petitioner no.1 by registered sale deed. It is true that the petitioner no.1 has purchased the land in question from the power of attorney holder of the petitioner nos.2 to 4 and the respondent no.3. The necessary entry with regard to the purchase of land by the petitioner no.1 is also made by Entry No. 1197 on 28.12.1988 under the provisions of the Bombay Land Revenue Code, the effect of sale deed is required to be given in the revenue records. It is the contention on behalf of the respondent no.3 that the alleged power of attorney executed by the petitioner no.2 to 4 and the respondent no.3 is a forged one and Kantilal Gulabbhai Kapadia was not authorised to sell the land in question. When there is a dispute with regard to title and the validity of the power of attorney, the parties are required to approach the Civil Court. As held by this Court in the case of Legal representatives of P.K.Ramani Vs. Collector, Rajkot reported in 2003(1) G.L.H. Page 30, when there is a dispute with regard to the title, the parties are required to be relegated to approach the Civil Court. The Revenue Authorities, while exercising RTS proceedings, had no jurisdiction to decide the disputed question of title and the validity of the transaction. Under the circumstances, it will be open for the respondent no.3 to file a civil suit challenging the legality and validity of the transaction which was in favor of the petitioner no.1 and the legality and validity of the power of attorney alleged to have been given in favor of one Kantilal Kapadia who has sold the land in question to the petitioner no.1. As held by the Honourable Supreme Court of India and this Court in catena of judgments, the entries in the revenue records

are for a fiscal purpose and only for the purpose of paying of revenue and ipso facto does not confer any right, title or interest in favor of any party in whose favor the entry is made. However, in view of the registered sale deed as of today in existence in favor of the petitioner no.1, necessary effect and/or entry is to be made in the revenue record which will be only for the purpose of fiscal purpose and for the purpose of payment of revenue. Ultimately, the parties are required to approach the Civil Court for establishing their rights and/or challenging the legality and validity of the transaction/sale deed/power of attorney. The entry in favor of the petitioner no.1 being Entry No.1197 dated 28.12.1998 would be for fiscal purpose and only for the purpose of payment of revenue and will be subject to the ultimate outcome of the civil dispute between the parties. At this stage, Shri J.M.Patel, Learned Advocate appearing for the petitioners has submitted that the petitioners are in possession of the land in question and an appropriate direction be issued restraining the respondent no.3 and his agents from disturbing the possession of the petitioners, more particularly, the petitioner no.1. On the other hand, Shri Sheetal Patel, learned Advocate for the respondent no.3 states that his client is in possession of the land in question. Without expressing anything on merits, with regard to who is in possession of the land in question, it is observed that the entry in favour of the petitioner no.1 would be for the purpose of fiscal purposes and for the purpose of payment of revenue and merely on the basis of Entry No.1197, the petitioner cannot claim the possession if he is not in possession of the land in question. The parties are directed to maintain status quo till appropriate orders are obtained from the Civil Court with regard to the possession which can be decided only after deducing evidence. However, merely on the basis of the entry, nobody will claim any possession. For the reasons stated above, the order of the State Government dated 21.6.2003 passed in Revision Application No.30 of 2001 is quashed and set aside. Rule is made absolute to the aforesaid extent with the aforesaid observations and directions with no order as to costs.

(M.R.Shah, J)

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